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No. 855

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

SHIRLEY-DUKE APARTMENTS, SECTION 1, INCORPORATED, *et al.*,

PETITIONERS,

v.

NORMAN P. MASON, FEDERAL HOUSING COMMISSIONER, *et als.*,

RESPONDENTS.

PETITIONERS REPLY TO BRIEF IN OPPOSITION

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Petitioners, in this reply, emphasize the necessity of review by the Supreme Court by scoring two points only:

I. The Respondents Have Based Their Case Upon the Fallacious Contention that the Corporate Charters Contained Restrictions Over and Beyond Those Provided in the Law and in the Rules.

II. The Respondents, by Challenging Nearly Every Contention of the Petitioners, Acknowledge the Numerous Issues of Law Important to Thousands of Citizens in All States of the Union Which Should Be Determined By This Court.

I.

The Respondents Have Based Their Case Upon the Fallacious Contention that the Corporate Charters Contained Restrictions Over and Beyond Those Provided in the Law and in the Rules.

The applicable laws of Congress specify the powers of the Federal Housing Commissioner. The Commissioner exercised these powers through certain Rules and regulations issued by him, under the terms of which he invited prospective mortgagors to build under Section 608. He specified that these Rules should be made effective by incorporation of appropriate provisions in the charters of the mortgagors (Ap. 92). It is difficult to believe that the Government would now contend that the charters imposed new and hidden restrictions upon mortgagors over and above those so clearly enunciated in the Rules. Yet this is exactly what the Government has done throughout this litigation and what it advocates in its Brief in Opposition (Respondents' Brief, p. 9 *et seq.*).

The Respondents have asked the Courts to write into the Charter certain restrictions which patently were not in the State laws, and were not in the Rules or regulations of the FHA itself. For instance, while the Federal Housing Commissioner was *permitted* by law to regulate mortgagors as to rate of return under Section 608, he did not in fact regulate the rate of return (Ap. 3, 21, 22, 90). By contrast he was *commanded* by law to regulate the rate of return and did so regulate under Section 207 (Ap. 6, 21, 22, 90).

The Charters of Shirley-Duke admittedly are filled with restrictions, numerous restrictions, specific restrictions, every one of which is based upon and carries into effect a requirement of the Rules. The Charters thus make the Rules effective. The Charters do not extend or broaden the Rules. Petitioners contend that where one hundred restrictions are specifically delineated, the one hundred and first restriction is not presumed but clearly, to the contrary, is negated.

II.

The Respondents, by Challenging Nearly Every Contention of the Petitioners, Acknowledge the Numerous Issues of Law Important to Thousands of Citizens in All States of the Union Which Should Be Determined By This Court.

Petitioners have pointed out in their Petition the numerous conflicts between the decisions of the lower Courts in this case and decisions of the Supreme Court and other Federal Courts (Petitioners' Brief, pp. 2, 3, 49, 66, 75, 82, 83, 87). Petitioners also pointed out that there are affected by this case more than seven thousand projects constructed under Section 608, having a total mortgage value of nearly three and one-half billion dollars. These projects comprise approximately half a million apartment units (469,598), thereby revealing an average of sixty-six apartment units per project. This average discloses that the vast majority of the projects were relatively small ones, not exceeding forty units per project, and located in every State of the Union. Thus it is incontrovertible that the issues here involved are of momentous importance to American citizens.

Moreover, the issues of law are also of paramount significance. The Respondents themselves emphasize this by challenging Petitioners' legal arguments. These issues involve questions including:

1. The clear and uncontradictable intent of Congress as shown by the record in this case (Respondents' Brief, p. 9, 17-21).

2. The applicability of State laws to private corporations in which stock is owned by Federal agencies (Respondents' Brief, pp. 10, 11).

3. Whether the Shirley-Duke corporations are private corporations or are invested with supernatural powers because of the ownership of Preferred Stock by the FHA (Respondents' Brief, pp. 11, 12).

4. Whether the contracts in this case, namely the Charters, must be construed, in defiance of general law, in favor of the FHA which drew the contracts (Respondents' Brief, pp. 13-15).

5. Whether, again in defiance of general law, the inclusion of one restriction in the Charter by the FHA raises a presumption that other restrictions were intended even though such other restrictions admittedly were not mentioned by the FHA Rules. (Respondents' Brief, pp. 13-15).

6. Whether a Government Agency, in this case the FHA, should be bound to the citizens with which it deals by its own repeated statements, publications, actions and course of dealing over a period of many years and made obviously within the powers conferred upon it by law (Respondents' Brief, pp. 21-22).

Determination by the Supreme Court of these issues of law will have a vital and far flung impact on American citizens in all parts of the country. Such determination will avoid widespread, long continuing and costly litigation in all ten Federal Circuits.

It is respectfully submitted that the case should be reviewed by the highest Court in the land.

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